



Bart L. Graham  
Commissioner

State of Georgia  
**Department of Revenue**

Suite 15300  
1800 Century Boulevard  
Atlanta, Georgia 30345  
(404) 417-2100

**NOTICE**  
**Number ST-2008-7**

**RE: Repeal of current Rule 560-12-2-.62 "Manufacturing, Machinery. Amended." and adoption of new Rule 560-12-2-.62 "Manufacturing Machinery and Equipment."**

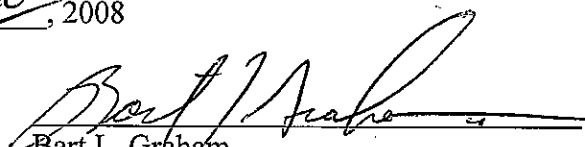
**TO ALL INTERESTED PERSONS AND PARTIES:**

In compliance with O.C.G.A. § 50-13-4, the Georgia Department of Revenue gives notice that it proposes to amend Chapter 560-12-2 of the Rules and Regulations of the State of Georgia by repealing Rule 560-12-2-.62 entitled "Manufacturing, Machinery. Amended." in its entirety and adopting in its place new Rule 560-12-2-.62, entitled "Manufacturing Machinery and Equipment." Attached with this notice are an exact copy and a synopsis of the proposed rule. The proposed Rule is being adopted under the authority of O.C.G.A. §§ 48-2-12, 48-8-3(34), and 48-8-3(34.3).

The Department of Revenue shall consider the adoption of the above-referenced Rule at 10:00 a.m. on Tuesday, Feb. 3rd, 2009 in Suite 15200 of the Department's headquarters at 1800 Century Blvd., NE Atlanta, GA 30345-3205.

The Department must receive all comments regarding the above-referenced proposed Rule from interested persons and parties no later than 10:00 a.m. Tuesday, Feb. 3rd, 2009. Written comments must be sent to: Commissioner, Georgia Department of Revenue, 1800 Century Blvd., NE, Suite 15300, Atlanta, GA 30345-3205. Electronic comments must be sent to [regcomments@dor.ga.gov](mailto:regcomments@dor.ga.gov). Facsimile comments must be sent to (404) 417-2293. **Please reference "Notice Number ST-2008-7" on all comments.**

Dated: December 29th, 2008

  
Bart L. Graham  
Commissioner  
Georgia Department of Revenue

# **SYNOPSIS**

## **GEORGIA DEPARTMENT OF REVENUE SALES AND USE TAX DIVISION**

### **CHAPTER 560-12-2 SUBSTANTIVE RULES AND REGULATIONS**

#### **560-12-2-.62 Manufacturing Machinery and Equipment**

The purpose of proposed rule 560-12-2-.62 is to provide guidance regarding the administration of O.C.G.A. §§ 48-8-3(34) and 48-8-3(34.3), which provides for an exemption from state and local Georgia sales and use tax on the purchase of certain manufacturing machinery and equipment.

Paragraph (1) of the proposed Rule provides the purpose of the Rule.

Paragraph (2) of the proposed Rule sets forth definitions and explanations of terms used in the Rule. The regulation defines “consumables, equipment, industrial materials, machinery, machinery clothing, manufacturing plant, manufacture of tangible personal property, manufacturer, packaging operation, predominant purpose,” and “repair or replacement parts.”

Paragraph (3) of the proposed Rule provides for the general rule of the application of Georgia sales and use tax to manufacturing machinery and equipment.

Paragraph (4) of the proposed Rule provides for the application of Georgia sales and use tax to machinery and equipment that are necessary and integral to a manufacturing process. The regulation explains the terms “necessary and integral” and provides examples of items that are not “necessary and integral” to the manufacture of tangible personal property. This paragraph further provides examples of machinery and equipment that generally will qualify for exemption when they are “necessary and integral” to the manufacture of tangible personal property.

Paragraph (5) of the proposed Rule expands on the definition of “manufacture of tangible personal property, and provides examples of activities that are not considered the “manufacture of tangible personal property.”

Paragraph (6) of the proposed Rule explains the application of Georgia sales and use tax to repair and replacement parts.

Paragraph (7) of the proposed rule provides special application and form requirements for new and existing manufacturing plants.

Paragraph (8) of the proposed rule provides the effective date of the rule as January 1, 2009.

**RULES  
OF  
DEPARTMENT OF REVENUE  
SALES AND USE TAX DIVISION**

**CHAPTER 560-12-2  
SUBSTANTIVE RULES AND REGULATIONS**

**~~560-12-2-.62. Machinery, manufacturing. Amended.~~**

~~(1) Definitions. For purposes of qualifying for the exemptions provided for by O.C.G.A. sections 48-8-3(34) and 48-8-3(34.3), and as used in this Regulation, the following definitions and explanations of terms shall apply:~~

~~(a) Component(s). (Reserved)~~

~~(b) Machinery.~~

~~The term "machinery" means an assemblage of parts that transmits forces, motion, and energy one to another in a predetermined manner to accomplish a specific objective.~~

~~(c) Machinery Clothing.~~

~~The term "machinery clothing" means felts, screen plates, or wires used to carry, form, or dry pulp and paper throughout the paper manufacturing process.~~

~~(d) Manufacture of Tangible Personal Property.~~

~~The term "manufacture of tangible personal property" means an operation or a series of operations at a fixed location whereby, through the application of machinery or the application of machinery and labor to raw material or materials at any stage of becoming finished tangible personal property, the form or~~

~~composition of the material or materials is significantly changed. Such term includes the assembly of finished units of tangible personal property to form a new unit or units of tangible personal property; a packaging operation when it is a part of a continuous manufacturing operation and the package or container becomes a part of the tangible personal property as such unit is customarily offered for sale by the taxpayer; and delivery of raw materials and work in process or finished units directly from one manufacturing operation to another in the same plant facility. Such term does not include: storage; delivery to or from the plant; delivery to or from storage within the plant; repairing or maintenance of facilities; research; developmental testing; random or sample testing of materials or products; or cleaning, filtering, sterilizing, sorting, weighing, or measuring when not part of the continuous manufacturing operation.~~

~~(e) Packaging Operation.~~

~~The term "packaging operation" means bagging, boxing, canning, crating, containerizing, wrapping, labeling, palletizing, and other similar processes used by the manufacturer to enclose or containerize manufactured products in a manner suitable for sale or delivery to customers.~~

~~(f) Replacement or Repair Parts.~~

~~The term "replacement or repair parts" means repair and replacement parts including but not limited to machinery clothing, molds, dies and tooling purchased for use on existing machinery that is used directly in the manufacture of tangible personal property at an existing manufacturing plant that restores the machinery to its original condition or does not upgrade machinery used directly in the manufacture of tangible personal property at an existing manufacturing plant. Such term shall not include spare parts purchased with machinery that is incorporated into a new plant.~~

~~(g) Upgrade.~~

The term "upgrade" means to modify, add to, or replace an item of machinery, or components thereof, in such a manner as to improve or increase the speed, efficiency, capacity, productivity, precision, operation, or function of such machinery or components in any significant manner; however, such term does not mean or include the maintenance or repair of machinery, or its components, so as to preserve or extend the normal useful life or functions of the machinery or so as to restore the machinery to its original state, capacity, or level of productivity.

~~(2) General requirements for the manufacturing machinery exemption.~~

~~In order to qualify for the manufacturing machinery exemption provided for in O.C.G.A. § 48-8-3(34), the property being purchased or leased must have the character of machinery at the time of the sale or lease, or consist of components which, when assembled, will have the character of machinery; the machinery must be used in the manufacture of tangible personal property for sale; the machinery must be used directly in the manufacturing operation; and the appropriate Certificate of Exemption under this Regulation must be obtained or provided. The exemption is not applicable to machinery used indirectly in the manufacturing operation, or to auxiliary equipment and appurtenances or to materials or items to be incorporated into real estate construction. The commissioner may allow an Application for Certificate of Exemption required by this Regulation to be filed subsequent to the purchase or lease of the machinery.~~

~~(3) New Manufacturing Plants; Applicability of Exemption.~~

~~(a) Any person making a sale or lease of machinery which is used directly in the manufacture of tangible personal property and which is incorporated for the first time into a new manufacturing plant located in this State shall collect the tax imposed thereon by O.C.G.A. sections 48-8-1, et seq., as amended, unless the~~

~~purchaser or lessee furnishes the vendor with a certificate issued by the commissioner certifying that the purchaser or lessee is entitled to purchase or lease such machinery without paying the tax.~~

~~(b) Any purchaser or lessee of machinery which is used directly in the manufacture of tangible personal property and incorporated for the first time into a new manufacturing plant located in this State who desires to secure the benefit of the exemption provided by O.C.G.A. § 48-8-3(34)(B) shall file an Application for Certificate of Exemption (Form ST-M1) with the commissioner. The application shall include a schedule of machinery to be purchased or leased, a full description of the usage of the machinery in the manufacturing operation, and the cost of each item of machinery. In addition thereto, the commissioner may require such other information as deemed necessary for the determination of the claim for exemption. These requirements are applicable to all purchasers and lessees, including holders of a direct pay permit under Regulation 560-12-1.16.~~

~~(c) Upon approval of an application, the commissioner will issue a Certificate of Exemption for Manufacturing Machinery (Form ST-M2) for presentation by the purchaser or lessee to the machinery suppliers, whereupon the purchaser or lessee shall be relieved from payment of the tax and the machinery suppliers shall be relieved from collection of the tax.~~

~~(4) Existing Manufacturing Plants; Applicability of Exemption.~~

~~(a) With regard to transactions occurring on and after July 1, 1995, any person making a sale or lease of machinery which is used directly in the manufacture of tangible personal property and which is incorporated, as additional machinery, for the first time into a manufacturing plant presently existing in this State, or which is purchased or leased to replace machinery or machinery components, purchased to upgrade machinery in a manufacturing plant presently existing in this State, shall collect the tax imposed~~

thereon by the O.C.G.A. sections 48-8-1, et seq., as amended, unless the purchaser or lessee furnishes the vendor with a properly completed Certificate of Exemption (Form ST-5).

~~(b) For machinery purchased or leased prior to July 1, 1995, and incorporated, as additional machinery, for the first time into a manufacturing plant presently existing in this State or purchased or leased to replace or upgrade machinery in a manufacturing plant presently existing in this State, in addition to all other requirements of the law and the other applicable requirements of this Regulation for qualification for exemption, an Application for Certificate of Exemption (Form ST-M1) must be filed with the commissioner. Such application must include a schedule of machinery to be purchased or leased, a full description of the usage of the machinery in the manufacturing operation, and the cost of each item of machinery.~~

~~(c) For machinery purchased or leased prior to July 1, 1994, and incorporated, as additional machinery, for the first time into a manufacturing plant presently existing in this State, or purchased or leased to replace machinery in a manufacturing plant presently existing in this State, in addition to all other requirements of the law and of this Regulation, the following requirements also apply:~~

~~1. In evaluating applications for exemption, the Commissioner will consider an addition to an existing plant site, or the addition of a new department to an existing manufacturing plant, to be a plant expansion; and such addition will not be deemed to constitute a new plant as provided for in O.C.G.A. § 48-8-34.~~

~~2. If machinery which otherwise qualifies for exemption is being purchased or leased for expansion of an existing manufacturing plant, the additional machinery will qualify for exemption if its acquisition results in a minimum increase in the productive capacity of the plant of 15%.~~

~~3. If machinery which otherwise qualifies for exemption is being purchased or leased as replacement machinery, such machinery can qualify for refund of that portion of the tax which represents the increase in normal production capacity of the replacement machinery over the machinery replaced by filing an application for refund, Form ST M4R, with the Revenue Commissioner. The refund will be made on the qualifying portion without interest.~~

~~4. Anticipated purchasing or leasing over a period of time without definite purchase commitments at the time an Application for Certificate of Exemption is filed will not qualify as an exempt plant expansion.~~

~~5. The purchaser or lessee shall maintain sufficient records to substantiate the increase in plant productive capacity requisite to the exemption from tax. Such records shall show the plant productive capacity for the production year immediately preceding the installation of the additional machinery and for the year immediately following completion of such installation. In the event facts subsequently determined by audit or otherwise show that the percentage increase in productive capacity upon which the Certificate of Exemption was issued was not attained in the minimum amount required for the issuance of such Certificate and by the time specified therein, as it may have been extended, the purchaser or lessee shall be liable for the payment of the tax, together with interest and penalties as provided by law.~~

~~(5) Replacement or Repair Parts; Phased in Exemptions.~~

~~(a) Replacement or repair parts as defined in paragraph (1)(f) shall qualify for a phased in exemption of sales and use taxes and shall be applied to all calendar years beginning on or after January 1, 2001, as follows:~~



~~1. Transactions occurring during the period from January 1, 2001 through December 31, 2001, shall qualify for a 20 percent exemption.~~

~~2. Transactions occurring during the period from January 1, 2002 through December 31, 2002, shall qualify for a 40 percent exemption.~~

~~3. Transactions occurring during the period from January 1, 2003 through December 31, 2003, shall qualify for a 60 percent exemption.~~

~~4. Transactions occurring during the period from January 1, 2004 through December 31, 2004, shall qualify for a 80 percent exemption.~~

~~5. Transactions occurring on or after January 1, 2005, shall qualify for a 100 percent exemption.~~

~~(b) The exemption applies to the first \$150,000 of the sales price of each replacement or repair part, regardless of the method of invoiceing or billing.~~

~~(c) With regard to transactions occurring on and after January 1, 2001, any person making a sale of replacement or repair parts used on machinery that is used directly in the manufacture of tangible personal property and is incorporated into a plant presently existing in this State, shall collect the total rate of tax unless the purchaser furnishes the supplier with a properly completed Certificate of Exemption (Form ST-5M). Any purchaser holding a direct pay permit under 560-12-1.16 may purchase eligible replacement or repair parts without the payment of tax to the supplier, but is required to accrue and remit the appropriate tax on such parts.~~

~~(6) Specific Applications; Exemptions and Exceptions Relating Thereto.~~

~~(a) When an otherwise exempt piece of machinery has multiple or interchangeable molds, dies, chucks, bits, or other tooling, only one such item per position on the machine will be recognized as an exempt component of an exempt machine. Those dies and molds having the character of machinery will be recognized as exempt machinery. This shall not be construed in any manner to limit the exemption provided for in subparagraph (5) above.~~

~~(b) Additional items which may qualify for the exemption include, but are not limited to, electrical parts, including transformers located between the motor control center and exempt machinery and between exempt machinery; process piping, exclusive of hangers and supports, between exempt machinery; computer hardware and software which control exempt machinery; compressors that power exempt machinery; boilers which produce steam to be used by exempt machinery; and testing or monitoring machinery which is a part of the continuous manufacturing operation and which tests or monitors all of the materials or work in process, provided that machinery. Machinery used in random or sample testing cannot qualify for the exemption.~~

~~(c) Examples of some common items that do not qualify for the exemption include, but are not limited to, foundations, supports, catwalks, hand tools, and items used for protection, or safety.~~

~~(Filed 12-21-00, eff. 1-10-01.)~~

**560-12-2-.62 Manufacturing Machinery and Equipment.**

- 1) **Purpose.** This rule explains the sales and use tax exemptions in O.C.G.A §§ 48-8-3 (34) and 48-8-3(34.3) for machinery and equipment necessary and integral to the manufacture of tangible personal property in a manufacturing plant, and for

repair and replacement parts associated with such machinery and equipment.

2) **Definitions.** For purposes of this rule, the following definitions and explanations of terms shall apply:

a) “Consumable supplies” means tangible personal property other than machinery, equipment, and industrial materials, that is consumed or expended during the manufacture of tangible personal property. The term “consumable supplies” includes but is not limited to oils, greases, hydraulic fluids, coolants, lubricants, or other chemicals including water treatment chemicals for use in, on, or in conjunction with machinery or equipment; electricity, natural or artificial gas, gasoline, fuel, or other energy commodities; and disposable items such as gloves, drop cloths, ear plugs, hair nets, and miscellaneous shop supplies.

b) “Equipment” means tangible personal property other than machinery, industrial materials, and consumable supplies. The term “equipment” includes durable devices and apparatuses that are designed for long term continuous or repetitive use. The term “equipment” includes but is not limited to, hand tools, molds, dies, waxes, jigs, patterns, conveyors, safety devices, and pollution control devices. Consumable supplies that are consumed or expended to operate or power equipment, or any of its component parts, are not considered equipment. The term “equipment” excludes buildings that house equipment and various parts or portions of a building that may attach to equipment including foundations, slabs, structural support systems, permanent fixtures or other components of real property

such as wiring and piping except between a motor control center and exempt machinery or equipment, or between separate units of exempt machinery or equipment.

- c) “Industrial materials” means materials that are purchased for future processing, manufacture, or conversion into articles of tangible personal property for resale when the industrial materials become a component part of the finished product. The term “industrial materials” also means materials that are coated upon or impregnated into the product at any stage of its processing, manufacture, or conversion. The term “industrial materials” includes “raw materials.”
- d) “Machinery” means an assemblage of parts that transmits force, motion, and energy one to the other in a predetermined manner to accomplish a specific objective. The term “machinery” includes the machine itself and all of its component parts including, but not limited to belts, pulleys, shafts, gauges, gaskets, valves, hoses, pipes, wires, blades, bearings, operational structures attached to the machine including stairways and catwalks, or other devices which are required to regulate or control the machine or to enhance or alter its productivity or functionality. The term “machinery” excludes consumable supplies that are consumed or expended to operate, control, or power a machine or any of its component parts. The term “machinery” excludes buildings that house machinery; various parts or portions of a building that may attach to machinery including foundations, slabs, structural support systems, permanent fixtures, or other components of real property such as wiring and piping except between a motor

control center and exempt machinery or equipment, or between separate units of exempt machinery or equipment.

- e) “Machinery clothing” means felts, screen plates, or wires used to carry, form, or dry work in process through the manufacture of pulp or paper.
- f) “Manufacturing plant” means a single fixed facility consisting of one or more structures or buildings in a contiguous area, where the manufacture of tangible personal property is the predominant purpose.
  - i) In determining whether a single fixed facility has such manufacture of tangible personal property as its predominant purpose, the Commissioner may examine the facts and circumstances of each case. Predominant purpose may include but is not limited to an evaluation of the following criteria:
    - (1) The amount of floor space of the facility that is devoted to the manufacture of tangible personal property;
    - (2) The number of employees at the facility that are working in the actual manufacture of tangible personal property;
    - (3) The wages and salaries of employees working at the facility that constitute the wages and salaries of employees working in the actual manufacture of tangible personal property; and

- (4) The total operating cost of the facility attributable to the cost of manufacturing tangible personal property.
- ii) Restaurants, grocery stores, pharmacies, residential operations, distribution facilities, and any other retail businesses that include the manufacture of tangible personal property as an incidental part of conducting their retail trade, are not manufacturing plants. Examples include onsite photo processing, copying, baking, cooking, preparing food products, or other similar services performed incidental to operating a retail business. Notwithstanding the foregoing, there may be rare situations in which the manufacture of tangible personal property in such locations is not incidental; however, in order to qualify as a manufacturing plant, any such location must meet the "predominant purpose" test set forth above in this subparagraph (f).
- g) "Manufacture of tangible personal property" means a manufacturing operation or series of continuous manufacturing operations engaged in at a manufacturing plant to change, process, transform, or convert industrial materials by physical, chemical, or other unnaturally occurring means into articles of tangible personal property for sale that have a significantly different form, configuration, utility, composition, or character. Such term includes but is not limited to the storage, preparation, or treatment of industrial materials that have been committed to manufacturing; assembly of finished units of tangible personal property to form a new unit or units of tangible

personal property; movement of industrial materials and work in process from one manufacturing operation to another; temporary storage between two points in a continuous manufacturing operation; testing that occurs in a manufacturing plant as part of a continuous manufacturing operation; and a packaging operation that occurs in a manufacturing plant as part of a continuous manufacturing operation.

- h) “Manufacturer” means any person engaged in the manufacture of tangible personal property for sale, in a manufacturing plant, in this state.
- i) “Packaging operation” means the conclusion of the manufacture of tangible personal property as part of a continuous manufacturing operation in a manufacturing plant. The term “packaging operation” includes bagging, boxing, crating, canning, containerizing, cutting, measuring, weighing, wrapping, labeling, palletizing, or other similar processes necessary to prepare or package manufactured products in a manner suitable for sale or delivery to customers as finished goods, and the movement of such finished goods to a storage area within the manufacturing plant.
- j) “Predominant purpose” means more than 50 percent of the time.
- k) “Repair or replacement part” means a part for new or existing machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Repair or replacement parts must be used to maintain, repair, restore, install, or upgrade such machinery or

equipment that is necessary and integral to the manufacture of tangible personal property. Examples of repair and replacement parts may include but are not limited to machinery clothing, molds, dies, waxes, jigs, and other interchangeable tooling. Miscellaneous spare parts, for which no designated use for the spare parts exists at the time of purchase, are not considered to be repair or replacement parts.

3) **General Requirements: Machinery and Equipment Exemption.**

- a) In order to qualify for the manufacturing machinery and equipment exemption in O.C.G.A § 48-8-3(34), the property purchased or leased must have the character of machinery or equipment at the time of sale or lease, or consist of components which, when assembled, will have the character of machinery or equipment; the machinery or equipment must be used in a manufacturing plant; the machinery or equipment must be used to manufacture tangible personal property for sale; the machinery or equipment must be necessary and integral to the manufacture of tangible personal property for sale; and the appropriate certificate of exemption under this regulation must be obtained or provided. Additionally, one of the following conditions must be met in order for the machinery and equipment exemption to apply:
  - i) The machinery or equipment purchased or leased must be used for the first time in a new manufacturing plant in this state;



- ii) The machinery or equipment purchased or leased must be used for the first time in an existing manufacturing plant in this state; or
  - iii) The machinery or equipment purchased or leased must replace or upgrade machinery or equipment in an existing manufacturing plant in this state.
- b) Any person making a sale or lease of machinery or equipment that is necessary and integral to the manufacture of tangible personal property for use in a new or existing manufacturing plant as new, additional, replacement, or upgraded machinery or equipment, must collect the tax imposed thereon pursuant to O.C.G.A § 48-8-1 et seq., as amended, unless the purchaser or lessee furnishes the vendor with a properly completed Certificate of Exemption (Form ST-5M, Form ST-M2), or direct pay certificate.
- 4) **Application of Machinery and Equipment Exemption: Necessary and Integral.** Units of machinery or equipment that serve an indispensable role in the manufacture of tangible personal property, and without which the manufacture of tangible personal property could not take place, will be considered machinery or equipment necessary and integral to the manufacture of tangible personal property.
- a) A unit of machinery or equipment that is merely indispensable to the manufacturer, but does not serve an indispensable role in the manufacture of tangible personal property, is not considered necessary and integral to the manufacture of tangible personal property.

- b) Manufacturing processes can differ significantly from one manufacturing operation to another. Thus, when determining whether machinery or equipment is necessary and integral to the manufacture of tangible personal property, the Commissioner may evaluate the facts and circumstances of each case.
- c) Examples of machinery or equipment that will not qualify as necessary and integral to the manufacture of tangible personal property at any time:
  - i) Motor vehicles that are required to be registered for operation on public highways;
  - ii) Machinery or equipment used to maintain, clean, or repair the manufacturing plant, machinery, or equipment;
  - iii) Power lines or transformers that bring electricity into the manufacturing plant;
  - iv) Building fixtures or structures used for general manufacturing plant ventilation, heating, cooling, illumination, communications, plumbing, or personal comfort and convenience of the manufacturer's employees;
  - v) Storage tanks, containers, racking systems, or other machinery or equipment used to handle, store, or distribute finished goods upon completion of the packaging operation;
  - vi) Administrative machinery or equipment including computers, related computer peripherals, servers,

copiers, telephones, facsimile machines, office furniture, office furnishings, office supplies such as paper and pencils, and educational materials used for administrative type functions including but not limited to sales, marketing, research and development, accounting and payroll, purchasing, inventory control, warehousing, and distribution.

- vii) Machinery or equipment purchased by a real property contractor to be installed in a manufacturing plant.
- d) Examples of machinery or equipment that generally will qualify for the exemption provided they are necessary and integral to the manufacture of tangible personal property:
  - i) Machinery or equipment used to convey or transport industrial materials and work in process from one manufacturing operation to another, and finished goods to a distribution or storage point in the manufacturing plant. Specific examples include but are not limited to forklifts, conveyors, cranes, hoists, and pallet jacks.
  - ii) Machinery or equipment used to gather, arrange, sort, mix, measure, blend, heat, clean, or otherwise treat, prepare, or store industrial materials for further manufacturing once they have been committed to the manufacture of tangible personal property.
  - iii) Machinery or equipment used to control, regulate, heat, or cool machinery or equipment, or produce energy for other machinery or equipment. Specific examples include but are not limited to boilers, chillers, condensers, water towers, dehumidifiers, humidifiers,

heat exchangers, generators, transformers, motor control centers, solar panels, and air compressors.

- iv) Testing and quality control machinery or equipment located in the manufacturing plant used to test the quality of industrial materials that have been committed to the manufacture of tangible personal property, work in process, or finished goods.
- v) Starters, switches, circuit breakers, transformers, wiring, piping, and other electrical components located between a motor control center and exempt machinery or equipment, or between separate units of exempt machinery or equipment.
- vi) Machinery or equipment used to provide safety for the employees working in the manufacturing plant including face masks, protective eyewear, hard hats or helmets, breathing apparatuses, or other safety machinery or equipment required by federal or state law.
- vii) Machinery or equipment used to condition air or water to produce conditions necessary for the manufacture of tangible personal property, including pollution control machinery or equipment and water treatment systems.
- e) For machinery or equipment that has multiple purposes, partly necessary and integral to the manufacture of tangible personal property, and partly not necessary and integral to the manufacture of tangible personal property, the predominant purpose of such machinery or equipment will

prevail for purposes of determining the eligibility for exemption.

- 5) **Application of Machinery and Equipment Exemption: Manufacture of Tangible Personal Property.** The manufacture of tangible personal property commences when industrial materials are committed to the manufacture of tangible personal property, and concludes once the packaging operation is complete and the tangible personal property is ready for sale or shipment.

a) Industrial materials: Commitment to the manufacture of tangible personal property.

i) If industrial materials are stored after being received at the manufacturing plant, they are not considered committed to the manufacture of tangible personal property until such time as they are removed from the initial storage area, and transported or conveyed to an area in the manufacturing plant that represents the final location where such industrial materials will be stored prior to being used. Industrial materials are considered to be committed to the manufacture of tangible personal property upon entering this final storage location where the industrial materials are typically gathered, arranged, sorted, mixed, measured, blended, heated, cleaned, or otherwise treated, prepared, or held for further manufacturing.

ii) If industrial materials are not initially stored after being received at the manufacturing plant but are instead delivered directly to the final storage location, they are

then considered committed to the manufacture of tangible personal property.

- iii) Industrial materials that are committed to the manufacture of tangible personal property need not be used immediately. However, they must have reached a point when initial storage has ceased and they will be utilized within a short period of time.
- b) Examples of activities that are not considered the manufacture of tangible personal property:
  - i) Research and development activities;
  - ii) Testing operations that occur outside the manufacturing plant;
  - iii) Initial storage and general handling of industrial materials;
  - iv) Storage, general handling, and distribution of finished goods;
  - v) Repairing, maintaining, or cleaning of manufacturing plant facilities or machinery and equipment;
  - vi) Quarrying and mining activities including the removal and clearing of overburden, blasting, and the extraction of oil, rock, stone, marble, or other minerals from the earth;
  - vii) Any other activity that occurs prior to industrial materials being committed to the manufacture of tangible personal property or after the completion of the packaging operation.

6) **General and Specific Requirements: Repair and Replacement Parts.**

- a) In order to qualify for the repair or replacement parts exemption in O.C.G.A. § 48-8-3(34.3), the property purchased must qualify as a repair or replacement part at the time of purchase or lease; the repair or replacement part must be used to maintain, repair, restore, install, or upgrade machinery or equipment that is necessary and integral to the manufacture of tangible personal property; and the appropriate certificate of exemption under this rule must be obtained or provided.
- b) Any person making a sale or lease of repair or replacement parts must collect the tax imposed thereon pursuant to O.C.G.A § 48-8-1 et seq., as amended, unless the purchaser or lessee furnishes the vendor with a properly completed certificate of exemption (Form ST-5M), or direct pay certificate.
- c) Stockpiles of miscellaneous spare parts, for which no designated use for the spare parts exists at the time of purchase by the manufacturer, are not eligible for an exemption as repair or replacement parts until such time as a part is withdrawn from the spare parts inventory and is used to maintain, repair, restore, install, or upgrade machinery or equipment that is necessary and integral to the manufacture of tangible personal property. The tax must be remitted upon the purchase of miscellaneous spare parts; and a corresponding deduction is allowed on the manufacturer's sales and use tax return when spare parts are withdrawn from the inventory of spare parts, and used to maintain, repair, restore, install, or upgrade machinery or

equipment that is necessary and integral to the manufacture of tangible personal property. The deduction shall be taken as a credit on the sales and use tax return of the manufacturer.

7) **Special Requirements: Applications and Forms.**

a) New Manufacturing Plants:

- i) Any purchaser or lessee of machinery or equipment that is necessary and integral to the manufacture of tangible personal property which will be used for the first time in a new manufacturing plant in this state, who desires to secure the benefit of the machinery and equipment exemptions available pursuant to O.C.G.A. § 48-8-3(34)(B), must submit an Application for Certificate of Exemption (Form ST-M1) to the Commissioner. The application must include a schedule of machinery or equipment to be purchased or leased, a full description of the usage of the machinery or equipment to be purchased or leased, and the approximate cost of each item of machinery or equipment. The Commissioner may require additional information, as necessary, in order to render a determination of the claim for exemption. These requirements are applicable to all purchasers and lessees, including holders of a direct pay certificate granted under Ga. Comp. R. & Regs. 560-12-1-.16.
- ii) Upon approval of the application, the Commissioner will issue a Certificate of Exemption for Manufacturing Machinery (Form ST-M2) for presentation by the purchaser or lessee to the supplier of qualifying



machinery or equipment, whereupon the purchaser or lessee is relieved from the payment of the tax and supplier of the machinery or equipment is relieved from collection of the tax.

b) Existing Manufacturing Plants:

- i) Any purchaser or lessee of machinery or equipment that will be used in an existing manufacturing plant as additional, replacement, or upgraded machinery or equipment, that is necessary and integral to the manufacture of tangible personal property, who desires to secure the benefit of machinery and equipment exemptions available pursuant to O.C.G.A §§ 48-8-3(34)(A), and 48-8-3(34)(C), must furnish the supplier of machinery or equipment with a properly completed Certificate of Exemption Form ST-5M, or direct pay certificate.

(1) Georgia Form ST-5M is a sales and use tax certificate of exemption designed specifically for Georgia manufacturers. A properly completed Georgia Form ST-5M will include the current date, name and address of the supplier, the purchaser's name, address, commodity code, certificate of registration number, and the signature and title of the owner, partner, or authorized official.

(2) Eligible taxpayers who hold direct pay authority granted under Ga. Comp. R. & Regs. 560-12-1-.16, may furnish a supplier with their direct pay certificate in lieu of, or in conjunction with, Forms ST-M2, or ST-5M.

- 8) **Effective Date:** This rule shall be effective for transactions which occur on or after January 1, 2009.

Authority: O.C.G.A. §§ 48-2-12, 48-8-3(34), and 48-8-3(34.3).